

# **Why Ask for Directions?**

## **A MAN'S GUIDE TO ARIZONA DIVORCE**

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WHY ASK FOR DIRECTIONS? A MAN'S GUIDE TO ARIZONA DIVORCE.  
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The general information in this book is not, nor is it intended to be, specific legal advice. You should consult an attorney for specific legal advice regarding your individual situation. Use this book for informational purposes only.

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*Dedicated to those involved fathers who strive for a permanent and stable position in their children's lives long after the divorce is final.*

## ***Author's Note***

I wrote *Why Ask for Directions? A Man's Guide to Arizona Divorce* for those men, most of whom are fathers with young children, contemplating the possibilities of divorce. The book is also a valuable resource for those men already party to a pending Arizona divorce action.

As I stress throughout the book, getting a divorce education is essential to achieving the best possible outcome in the case. As you read through *A Man's Guide to Arizona Divorce*, you will quickly gain insight into the main issues involved in a dissolution of marriage, with and without children, which will enable you to make truly informed decisions. The choices made during the divorce process will have long-term consequences for you, your children, and the other party. Fathers need to understand how Arizona child custody laws will influence their parenting options. Preparing for positive change and a new life after the divorce requires advance study and planning for each phase of the process.

You may already have very complex questions regarding your family's circumstances. Perhaps you are concerned about post-divorce child custody modifications and relocation issues. But some legal procedures are beyond the scope of *A Man's Guide to Arizona Divorce*. I have a solution. As you read each chapter, freely visit my law firm's website at **[www.sdsfamilylaw.com](http://www.sdsfamilylaw.com)** and utilize it as a supplementary resource. You will find an extensive library there on Arizona divorce, property division, child custody and parenting time, visitation, child and spousal support, domestic violence, and alternative dispute resolution.

For a more detailed discussion in ebook form, consider downloading *Getting Started, 7 Must Do Items for Divorce Planning*.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott David Stewart', with a long horizontal flourish extending to the right.

**Scott David Stewart**

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# **Introduction to *Why Ask for Directions?* A Man's Guide to Arizona Divorce**

The decision to end a marriage should never be made during the heat of an argument, despite any ugly challenges bandied back and forth. Instead, the possibility of divorce should be considered with a very cool head, even if that means a week or so must pass before making the final call on whether to end the marriage now or give it more time.

On the one hand, maybe your wife has decided to file for divorce, but you are not convinced that such drastic measures are necessary – you hope to reconcile. If one spouse believes the marriage is *irretrievably broken*, the divorce will move forward in the family law court. You can work toward reconciliation if your wife cooperates, through counseling or mediation for example, but the divorce action will still proceed unless she opts to have the action dismissed.

On the other hand, maybe you have decided to file for divorce. Has the marriage evolved into something that you do not want to be part of any longer? Have you tried and tried again, for the sake of your children or after yet another short-lived truce, to remain in an otherwise hostile marriage? Do you simply want something more out of life, for yourself and for your kids?

Once that important divorce decision is made, immediately start preparing by educating yourself on the legal issues that will be raised – mainly the division

of property, spousal maintenance, child custody and parenting time, and child support. *Do not be half-hearted in your efforts, that will cost you!*

The reasons for ending a marriage may be many, and may go back for years and years. Whatever has led you to the threshold of divorce, *Why Ask for Directions? A Man's Guide to Arizona Divorce* is the best resource to begin your journey. Immediately begin preparing for the road ahead, but be reasonable, contemplative, cautious, and diligent. Before you get started with the first chapter, here are a few thoughts on the family finances, hiring a divorce lawyer, moving to a new place, and additional Arizona divorce resources.

### ***Family Finances***

In the divorce, you must present a complete family financial picture. So any supporting documentation you can retrieve from the marital residence or from storage will save you time, trouble, and money later on. If you are uncertain whether the document you are examining is something necessary for the divorce, or you suspect it may be redundant or not needed, then resolve the dilemma by copying it anyway. Leave it to your divorce attorney to decide later whether it is relevant to the case or not. With divorce preparation, you will be in a better position to have the document and not need it, than to need it and not have it. You will read more about this in ***Chapter 1: DIVORCE, A Tactical Approach for Men.***

You need to list the monthly household expenses for your family. Include food, clothing, mortgage payment, fuel, car payments, activities, utilities, insurance premiums, lawn services, trash removal, telephone, and so on. To get a handle on monthly household expenses, especially if you were not the spouse

handling payments each month, get copies of all bills and statements. Make sure you know precisely what it costs to run your family's household.

### ***Take Hiring a Divorce Attorney Seriously***

You have the legal right to represent yourself in court as a *pro se* litigant, but carefully reflect on what is involved before you decide to “save some money” and do it yourself, especially if you have minor children. Divorces with children achieve a whole other level of complexity over divorces without children. Even seemingly minor procedural mistakes, misunderstandings of the applicable law, and errors in judgment can have very costly legal consequences.

As with any court case, if you are a party to the action, then you are almost certainly too close to the heart of the subject matter to carry through with objectivity. Know that at times, even with the advocacy of a knowledgeable attorney, you will likely find yourself emotionally drained and weary with the whole process. Also, you must be fully apprised of your father's rights at every procedural step involving your children. The advocacy of a divorce lawyer may be pivotal to your success in a child custody dispute. Make sure to read ***Chapter 2: SUCCESS, Choose Your Attorney Wisely*** for specific selection criteria.

### ***Preparing To Move Into Your New Place***

You may plan to remain in the marital home temporarily or permanently, whether you have children or not. If you really want to stay during and after the divorce, then do not move out. Before you commit to staying or leaving, though, take a few moments to reflect.

What is the condition of the home? Does it need major repairs? Are you able to devote the time and money necessary to maintain the house? How closely tied are you and your children to the community? Is the home in a safe neighborhood? Are the schools good? Will your children be bussed long distances? What employment opportunities are there for you? What is the possibility of selling the home? Are you likely to make money, lose money, or break even if the house is sold? Is there more desirable housing available elsewhere?

If you plan to leave the marital residence, then have a place ready to move into when you separate from your wife. Be practical; find a house or apartment that you can afford. Be mindful that you will soon have substantial new expenses, including legal fees if you hire a divorce attorney. Find a suitably pleasant, clean, safe place for yourself and your children. Whatever you do, resist the temptation to sign a lease on the first furnished three-bedroom apartment you walk through. If you want custody of your kids, then you need to establish a residence near schools, daycare, doctors, and so on. I know how eager you are to move, to get settled in your own place, and to start a new life, but plan the location of the new residence very carefully before committing to a lease agreement.

Once the divorce is pending, a preliminary injunction will make accessing your marital financial accounts more involved than simply stopping at the ATM and withdrawing cash. Before you leave, make sure you have sufficient funds set aside to cover your moving expenses. Relocating costs money and leasing the moving truck is only the tip of the iceberg. Renting an apartment or house typically requires a deposit (even with high credit scores) and first and last

month's rent. Deposits are also required for utility hook-ups and services for telephone, cable, satellite, and so on.

### ***Additional Arizona Divorce Resources***

As you read through each chapter of *Why Ask for Directions? A Man's Guide to Arizona Divorce*, jot down any questions pertinent to your family's unique circumstances. With list in hand, continue your divorce education by reaching beyond the pages of this book. First, visit my law firm's website at **[www.sdsfamilylaw.com](http://www.sdsfamilylaw.com)** for a full resource library. With free videos, divorce webinars, and downloadable apps the Law Offices of Scott David Stewart's website covers all aspects of Arizona divorce, child custody, child support, property division, spousal maintenance, domestic violence, and mediation in divorce. You can also sign up for our free monthly *Arizona Divorce Newsletter* for current events and friendly advice on family law.

Second, if your current plan is to represent yourself in court as is your right, or if you want immediate access to detailed divorce information (documents, checklists, and precise instructions drafted by attorneys, etc.), consider subscribing to my law firm's online ***Arizona Divorce & Custody Coach*** at **[www.onlinedivorcecoach.com](http://www.onlinedivorcecoach.com)**. As a member, you will find navigating the system very straightforward. Everything you need to fully negotiate all issues relating to your divorce is included with your subscription.

Importantly, all members have unlimited email access to an Arizona licensed divorce attorney, so you can get your legal questions answered by an attorney at a fraction of the cost of hiring counsel. Yes, there is a modest monthly fee, but once you have researched and downloaded what you need from the

*Arizona Divorce & Custody Coach*, you are free to cancel at any time, no questions asked.

Are you ready to begin a man's divorce education? Let's get going!

# Chapter 1

## DIVORCE

### A Tactical Approach for Men

At first, the divorce process may seem rather daunting – there is a lot of information to absorb in short order. But as you progress through each chapter of *Why Ask for Directions? A Man's Guide to Arizona Divorce*, our state's family law procedures and domestic relations laws will become clear to you. As a roadmap for what lies ahead, take a look at the basic procedural steps in every Arizona divorce:

**Step 1 – Petition for Dissolution of Marriage.** Filing this petition asks the court to dissolve the marriage; it is *the* document initiating divorce proceedings. Either spouse may file the petition.

**Step 2 – Summons and Response.** Assuming you filed the petition, this is formal notice to your spouse of your intention to pursue court action to obtain a legal divorce. Your wife's response, as the other party to the lawsuit, is her acknowledgement that the divorce procedure has begun.

**Step 3 – Motions.** These are formal requests for the court to order some type of action before the trial. In situations involving domestic abuse, for example, it is not uncommon for a motion for an Order of Protection, or restraining order, to be filed. There are many forms of motion, each carefully written to carry out a specific request.

**Step 4 – Discovery.** This phase of the divorce allows each party to gather information and evidence in support of their legal arguments; it begins

with financial disclosures at the outset of the divorce.<sup>1</sup> The most commonly used tools of discovery are interrogatories on the other party, depositions, requests for production, and requests for admission.

**Step 5 – Hearings and Temporary Orders.** Often there are questions or situations that must be temporarily resolved before the final divorce agreement is reached between the spouses or is ordered by the judge. If the parties dispute, for example, where the children will reside during the divorce proceedings, then they will ask the court to decide temporary physical custody for them. Generally, the court’s temporary orders remain in effect until the final decision is made at the end of the divorce. Do not take hearings on interim orders lightly as something that can be easily changed later – temporary orders can, and often do, become permanent ones.

**Step 6 – Trial.** This is a critical court appearance before the judge where the case will be decided. The trial may include witnesses, financial experts, psychologists, as well as the submission of other types of evidence including financial records. Should the parties reach agreement through pre-trial negotiations and mediation on all issues in their divorce, then the necessity of a trial may be avoided.

**Step 7 – Final Decree of Divorce.** The decree of dissolution of marriage is a final judgment, a legal statement of the court’s rulings on all the issues in question during the trial: child custody, parenting time and visitation, child support, spousal maintenance for either party, and the division of property. With the divorce finalized, the parties are free to marry other people.

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<sup>1</sup> Arizona Rules of Family Law Procedure (ARFLP): Rule 49 – Disclosure.

## ***Divorce on What Grounds?***

Arizona's no fault divorce laws allow the courts to legally dissolve a marriage without allegations of fault or marital misconduct, effectively taking the blame out of divorce. Unlike some other states, there is no requirement in Arizona that the spouses be separated for a specified period of time before the divorce can be finalized. Either party may obtain a divorce without the consent of the other spouse. The no fault ground for divorce is that the marriage is “irretrievably broken” with no reasonable expectation of reconciliation<sup>2</sup> – once that is established, the court can dissolve the civil marriage contract between a man and a woman. However, there is another Arizona marriage that does require certain allegations and proofs before the marriage may be dissolved – the *covenant marriage*.

In 1998, Arizona gave couples the option of entering into a covenant marriage with attendant pre-marital counseling and specified grounds for divorce. (If you are unsure, look at your marriage license to determine whether you have a covenant marriage or not.) The court can only dissolve a covenant marriage<sup>3</sup> when the party seeking the divorce alleges and proves that at least one of the following is true:

- 1. The other spouse committed adultery.*
- 2. The other spouse was convicted of a felony and sentenced to imprisonment or death.*

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<sup>2</sup> A.R.S. § 25-316. Irretrievable breakdown; finding.

<sup>3</sup> A.R.S. § 25-903. Dissolution of a covenant marriage; grounds.

3. *The other spouse abandoned the marital home for at least a year.*
4. *The other spouse committed domestic violence or emotional abuse.*
5. *For at least two years, the spouses were separated continuously without reconciliation.*
6. *For at least one year, the spouses were separated continuously without reconciliation after a decree of legal separation was obtained.*
7. *The other spouse habitually abused drugs or alcohol.*
8. *Both spouses agree to dissolve their covenant marriage.*

The *decree of legal separation* referred to above does everything but terminate the civil marriage contract between husband and wife. The marriage is still irretrievably broken and the parties still address issues of child custody, support, and property division. But if one spouse objects to legal separation (because of religious reasons, for example), then the court cannot proceed further – the couple either gets divorced or stays married. In contrast to the decree of divorce, parties with a decree of legal separation cannot marry other people because they remain legally married to each other.

### ***Preparation Is Key To a Positive Outcome***

Like most challenging jobs, preparation is absolutely essential to a positive outcome. As soon as a decision to end the marriage is made, begin planning for the legal aspects of what necessarily follows. Now is the time to take action and do the following:

- 1. Set up your own bank account.*
- 2. Open your own credit card account.*
- 3. Prepare your complete financial picture.*
- 4. Take precautions to protect your privacy and security.*
- 5. Prepare for custody of your children.*
- 6. Prepare an inventory of all your personal property.*
- 7. Prepare your contact list of important people.*

Are you ready to get started preparing for your divorce?

### ***1. Set Up Your Own Bank Account***

Open a new bank account in your name only. This will be your separate financial account, one that your wife cannot access. Under Arizona's marital property laws, you may take your half of the marital community's cash and direct deposit that amount into your new bank account.

### ***2. Open Your Own Credit Card Account***

Open a credit card account in your name only. Use credit with restraint and pay off charges every month to establish and raise your personal credit score. You should also consider canceling any credit cards or charge cards that are no longer in use, but are in both your names.

### ***3. Prepare Your Complete Financial Picture***

You must provide a complete family financial picture for the divorce, so make copies of documents going back at least 12 months. If you are unsure whether a certain document is relevant to your case, copy it anyway – leave it to your attorney to decide how best to utilize the information, if at all. When unable

to locate specific files, make sure to retrieve the account numbers (you can order a credit report later to fill-in important account details).

Are you planning to leave the marital residence? *Make copies of everything you need for your case before you move out!* Returning to retrieve financial information after you've moved out often leads to complications, delays, and expenses that could have been avoided. There is one huge exception to that rule: when domestic violence threatens, do not put yourself at risk of harm to retrieve records. (That includes any threats from your wife, her friends, family members, or her significant other.) Instead, discuss the situation with your attorney who will decide how best to proceed.

Your obligation to provide comprehensive financial disclosures includes income, yours and hers. Before separating, locate employment information and documentation to verify your wife's employer and her income – make copies of paystubs, 1099s, W2s, and any other related documents. List all financial accounts and copy the account statements, including bank and credit union accounts, investment accounts, pensions plans, IRAs, and 401(k)s. Tax returns and business reports contain a great deal of financial information, so copy those as well.

Your assets will be divided in the divorce. Records and instruments of title establish what property is your separate property; what is your spouse's separate property; and what is community property and divisible. Deeds and real property interests are less of a problem because they are recorded instruments. For a nominal fee, officially certified copies of instruments and documents of title can be obtained through the county where the property is located.

Unlike deeds and mortgages, promissory notes are not generally recorded, so locate those and make copies while you still have access to the residence. Prepare a complete list of all credit card accounts shared with your wife. Make copies of all bills and statements. Copy all insurance declarations – healthcare, life, automobile, homeowners, business, key person, disability – so you have policy details, the insurer’s information, the insured, the beneficiary, and the premium.

Here is a checklist of the financial documents you should copy for your case:

- Pay stubs and income verifications
- State and federal tax returns for the prior three reporting years
- Vehicle certificates of title and any loans thereon
- Real property and any mortgages, deeds of trust, or land contracts thereon
- Credit card and charge card accounts
- Insurance policies (note beneficiary designations)
- Investment accounts
- Pension and retirement accounts
- Bank and credit union accounts
- Business operations records

Prepare a *budget* that reflects your new living situation and, if you have minor children, include all anticipated child-related expenses in that budget.

Lastly, you must protect all of this information. Store the copies and any related documents in a secure place where your wife cannot gain access, such as a safe deposit box at a bank in your name only.

#### ***4. Take Precautions to Protect Your Privacy and Security***

Now you need to think in terms of protecting your security, so change the passwords on all of your financial accounts. Change all of your existing email account passwords, too. (But save any emails from your spouse or from others that are relevant to your divorce.)

For privileged communications with your attorney, and there will be many, open a new secure email account in your name only. If at any time you suspect your wife of having acquired your password, then change it immediately and notify your attorney of the possible privacy breach.

*Warning: Whatever you post may be used against you as evidence in a family law case!* Your social media presence, particularly on Facebook, will be highly scrutinized during the divorce. Take precautions to protect your online privacy and preserve your personal and business reputation. Even after the divorce is final, any online lack of decorum could easily come back to bite you later in a child custody matter.

For personal safety, security, and privacy reasons, change the passcode or password on your alarm systems right away.

#### ***5. Prepare for Custody of Your Children***

You and your wife must create a detailed parenting plan for the care of your children. Start keeping a parenting journal to calendar and note what is

happening on a daily, weekly, and monthly basis regarding each of your kids. Developing a useful parenting plan begins with an analysis of everyone's schedules: school days, extra-curricular activities, holidays, doctor visits, and employment hours. Everyone's schedule must be coordinated and charted out for the entire year as part of your proposed parenting plan.

You need to decide who the kids will live with. Will you share custody with their mother? How often will they be visited by the non-custodial parent? How will the children's expenses be paid? Decisions must also be made over their healthcare, education, religion, and welfare. If you do not plan to seek primary physical custody, then concern yourself instead with maximizing your parenting time and staying involved in your children's daily lives.

## ***6. Prepare an Inventory of All Your Personal Property***

You must inventory *all* of your personal property – prepare an accurate list and take photographs. The easiest way to accomplish this task is to go building-by-building and room-by-room with a clipboard, notepad, pencil, and digital camera (with the date stamp “on”). Don't forget the home safe and any safe deposit boxes that you and your wife have (inventory the contents and take a photo).

Under Arizona's laws, community property includes all assets that you and your wife accumulated during the marriage. Separate property, by contrast, includes any property owned by either of you before the marriage, or that either of you acquired by gift or inheritance during the marriage. As you compile your inventory, list each item by description and jot down a “C” (for community) or “S” (for separate).

Sometimes wives take out their frustrations in imprudent ways. If she might take your separate property without consent or may damage property, then remove your things and store them in a secure location before the divorce is filed.

Take those items that are irreplaceable to you, like early photos of your kids and other family keepsakes. Do not trust these items with your wife if you really want them. Instead, make copies, take photos, and store the keepsakes in your new safe deposit box (or some other secure location).

### ***7. Prepare Your Contact List of Important People***

Get totally involved in your children's lives before you separate from their mother, and stay just as involved after you separate. Do everything you possibly can to stay connected with your kids! If you won't have the children living with you right away, then you better work on preventing time, distance, and the stress of divorce from eroding your role as their Dad.

Your life is about to undergo a major change – this is not the time to lose contact with people. Learn the names of important individuals in your children's lives and prepare a contact list of telephone, address, and email information for: healthcare providers, teachers, administrators, accountants, financial planners, insurance agents, counselors, professional advisors, day care centers, babysitters, employers, pastors, youth group leaders, family members, neighbors, and the parents of your children's buddies and team mates. These are all important people with whom you need to stay connected, both during and after the divorce.

## ***When There Is Domestic Violence***

Break-ups can be tremendously emotional. In the heat of argument, could you lose your self-control if provoked? Is it possible that you could threaten your wife or your kids, even if you would never dream of carrying out any such threat? If so, then stay away from the marital residence and arrange to collect your property and records through your attorney.

Is your wife threatening violence? When you or your children are victims of domestic violence or abuse, put safety first. Leave the marital home immediately for a safer location or safe house where your children will be protected.

***If you or your children are threatened with domestic violence or abuse, call 911.***

## **Chapter 2**

### **SUCCESS**

### **Choose Your Attorney Wisely**

In a divorce, spouses become “parties” to a legal action in which their respective interests are quite often in opposition. There is no Arizona law mandating that you hire an attorney, but a successful outcome almost always depends upon doing so. And if you are the father of young kids, forget about it – just hire your own divorce lawyer.

Can you save a few bucks, share legal fees with your wife, and hire one attorney to represent you both? In a word “No” – there is a direct conflict of interest in such dual representation. Not only would this violate the professional ethical standards required of the attorney (who is only permitted to work with one party in a divorce), it would jeopardize your respective legal rights.

In another attempt at cost savings, your wife may offer to hire an attorney while you represent yourself *pro se*. That does not present an ethical issue for *her* attorney because the legal representation is limited to one party. However, that is not the best legal strategy for you. That attorney will be advocating on her behalf, not yours, and you don’t want to be out-gunned.

Should you decide to go forward as a *pro se* litigant, be very cautious about signing papers drafted by your wife’s attorney. Consider taking any important dissolution documents, such as a *separation agreement*, to a limited representation divorce lawyer for review. This will ensure that the document

fairly presents the parties' agreement and does not unfairly advocate for your wife's position.

When you step back and look at the big picture, it is almost always best to hire an attorney to take the legal controls and drive the divorce to conclusion. Choosing an attorney is one of the most important decisions a party can make. By being very selective, you will have greater confidence in the representation and in the legal proceedings. Of course you need to know "how much?" But do not base your hiring decision on legal fees alone – there is a lot more to the analysis than that, as you will soon see.

Of necessity, you will be placing a lot of trust in the person you hire over the most important aspects of your personal life, so choose your attorney wisely and get answers to the eight essential questions that follow.

### ***1. Is Your Law Practice Focused***

#### ***Exclusively on Divorce and Family Law?***

With our courts continuously interpreting laws, our legislatures passing new laws and amending existing ones, our judges applying rules differently in their courtrooms, the last lawyer you need representing you is someone who dabbles a little in divorce cases.

To navigate the ever changing waters, you need a seasoned attorney whose practice is focused exclusively on divorce and family law. Someone who will be up to speed on the current laws affecting your case. Someone who has tried many divorce cases successfully, has dealt with complex asset divisions, and has

handled contested custody matters. Look for the attorney who anticipates and strategizes with professional confidence built on years of experience.

## ***2. What Attorney Credentials***

### ***Do You Bring to the Representation?***

Any attorney that you consider must be knowledgeable about Arizona's laws and the federal laws affecting your divorce – insurance laws, tax laws, domestic violence laws, child support laws, child custody laws, and so much more.

Before you hire, examine the profiles and credentials of the entire legal team at the law firm – from partners, to associates, to paralegals. A favorable outcome in your case may depend upon it!

## ***3. Have You Ever Been Sanctioned***

### ***for an Attorney Ethics Violation?***

Attorneys are held to high ethical standards with regard to the practice of law and to the customer service they provide to their clients. You need assurance that the moral character and legal competency of the attorney justifies your hiring decision.

The State Bar of Arizona regulates all of its attorney members and, when necessary, disciplines those lawyers with sanctions intended to punish for acts of professional misconduct. A grievance filed against an attorney may lead to reprimand, probation, suspension, restitution, and disbarment. If the attorney has been sanctioned, then you need to know about it.

***4. Will You Be the Attorney Handling My Divorce  
or Will My Case Be Handed Off to  
Another Attorney With the Firm?***

At some law firms, the attorney who meets with you at the initial consultation is not the one who will be representing you in court. Reject having your case assigned to the attorney with the lightest caseload that week. Reject assignment of an attorney because he or she “could use the experience” your case offers.

If you are interviewing one attorney, but will be represented by another at the same law firm, then take the additional time to interview the attorney who will actually be handling your case. Yes, you have taken up some of the firm’s valuable time with the first interview. But really, is it asking too much to simply meet with your prospective advocate before you sign a representation agreement and pay a retainer fee?

***5. How Much Will the Legal Representation Cost?***

Find out how much you will be charged for lawyer services and what the retainer fee will be, if any. Managing your legal expenses requires planning and budgeting. To budget properly you need to know when you will be billed, so ask what the attorney's billing practices are. Some lawyers will not send statements out to their clients for months at a time, resulting in surprisingly high bills covering months of services. You don’t need bills that exceed the funds you have available to pay.

Additionally, some attorneys will charge a premium rate for their court appearances. Make sure to ask how the lawyer's *time* will be billed when working on your divorce. Some law firms charge a 15-minute minimum for any task, regardless of whether the work took the attorney five minutes or 15.

## ***6. Will I Receive Copies of Every Document in My Case and Will My Calls Be Returned Promptly?***

When you interview a prospective attorney, be certain to ask how the law firm assures that you will have access to all case documents whenever *you* need them. You do not want the added worry of not knowing what has transpired in your divorce. And you do not need the frustration of being told to respond to pleadings that you have never seen and know nothing about.

Unfortunately, some attorneys fail to provide their clients with copies of filed court documents (like motions from either party), orders issued by the court, or correspondences between the attorneys. To make matters worse, some lawyers chronically fail to return their client's telephone calls within a reasonable time (like within 24 hours of receiving the message).

Does the attorney and law firm have adequate internal management systems in place to assure that you are always apprised of what is happening in your divorce? Will you be able to reach your attorney when you need to, without unreasonable delay? If the answers to these questions leave you with doubts, then look elsewhere for competent legal representation and responsible customer service.

## ***7. How Much Experience Do You Have With Complex High Asset Property Divisions and Finding Hidden Assets?***

The division of assets and debts in some divorces may be very complex and openly contentious, which can be challenging for the parties, their attorneys, and the court. Adding emotional tension to an already taught situation, some individuals will attempt to conceal assets from the other spouse.

Not all divorce attorneys are knowledgeable about business valuations, stock portfolios, financing matters, tax and debt issues, or how to identify and successfully uncover hidden assets. Before you hire, learn whether the person is experienced in dealing with complex and high asset divorce cases. Does the attorney know how to go about searching for clues to hidden assets? If you suspect your wife is deliberately concealing assets, then aggressive legal action must be taken by your lawyer to bring those assets before the court.

## ***8. How Much Experience Do You Have With Contested Child Custody Matters?***

If you have minor children, then it is essential that your attorney be experienced with contested child custody matters. You want to hire the person who knows how to avoid problems without diminishing your legal position. You do not want your attorney inflaming, intentionally or unintentionally, an already highly emotional situation to your kids' detriment. The attorney must be prepared to advocate your position through litigation if you and your wife cannot agree on custody.

In all child custody cases, whether part of a divorce or separately brought as a family law case, the dominate principle is that custody will be awarded to the parent who the court believes will act in “accordance with the best interests of the child.” In Arizona, there is no legal presumption favoring one parent over the other. As a father, if you desire primary physical custody or sole legal custody, then search for the legal advocate with lots of child custody experience.

Whenever custody is part of divorce, there are a number of procedures and professionals involved to assist in determining what is in the child’s best interests. Mediation, parenting conferences, child custody evaluations, and settlement conferences are all part of child custody determinations. The child may have legal advocates, too. A best interests attorney and child’s attorney may be appointed to represent the minor throughout the court proceedings. Be sure to inquire – before you commit to a particular law firm – whether the divorce attorney you are considering has ample experience with all of these child custody procedures.

Hiring your divorce attorney is a giant step toward permanent change for you and your kids. When you begin the divorce in earnest with your lawyer, remember these important points:

- Your attorney wants to help you move on with your life, the life that *you* imagine for yourself. Prepare to discuss your goals; the attorney needs a clear understanding of what you perceive to be a desirable outcome. Within reason, those stated objectives will influence your attorney at every step in the divorce process.

- Your attorney is on your side, but that does not guarantee a win on every issue in the divorce. Keep your expectations realistic while preparing to challenge your wife on the issues most important to you. Your attorney will explain each phase of the divorce so that you understand what will be happening and how your rights and responsibilities will be affected. Whenever advocacy is needed, your attorney will be there to present your side within the confines of the family laws applicable to divorce.

- Your attorney will be helping you through some very complicated issues, one of which is property division. Once you understand your property rights and have allocated assets and debts as either community property or separate property, you can start moving toward a property settlement.

- Your attorney will be drafting any separation agreement that you and your wife have worked through. That agreement becomes enforceable on both of you when it becomes part of the court's final decree of dissolution.

- Your attorney will be scheduling and calendaring every significant date and deadline in your divorce. This ensures that every proceeding goes as smoothly as possible and that pleadings and hearings occur on time and without unnecessary delays.

This may be your first experience with divorce, but your lawyer has been through all of these procedures many times before. Rely on your attorney's advice and legal discernment; be assured knowing that your legal advocate is working diligently on your behalf.

## **Chapter 3**

### **CUSTODY**

### **She Said *She* Wants the Kids**

Child custody and parenting time are the most important family decisions you will be making in the divorce. How involved will you be in your kids' lives? What lifestyle do you envision for them? What relationship will your children have with their mother? How should your children be treated by a step-parent? How will college or vocational school expenses be covered after high school? With a disabled child, how will you ensure that special needs are met?

Managing the child custody issues in divorce will require considerable effort on your part. As an overview of Arizona's custody laws, this chapter explains what your father's rights are when your wife says *she* wants the kids, and what the court requires of you both.

#### ***Dads Do Get Custody***

First of all, there is no presumption in Arizona law that the mother will get custody – the court cannot prefer one parent over the other based on the party's sex. However, the child's day-to-day caregiver (father or mother) carries great weight with the court in deciding custody matters. Any father who wants custody must go the extra mile and be 100% prepared for every proceeding. That preparation begins with knowledge of the distinction between *legal custody* and *physical custody*.

*Legal custody* is the cornerstone of parental decision-making. The parent with legal custody has authority to determine how important decisions will be

made. These are decisions over how the child will be raised in faith, and over healthcare and education. A father with *sole legal custody* has the authority to determine how those important decisions will be made. With *joint legal custody*, the most common arrangement in Arizona, both parents retain equal decision-making authority over these child-rearing matters.

The *physical custody* of a child refers to the amount of time he or she will spend with each parent. With *joint physical custody*, the child's time alternates routinely between both parents. If your child spends significantly more time with you, then you may be designated the primary residential parent which allows you to make day-to-day decisions concerning your child (that designation may also affect legal decisions, such as the selection of your child's school). *Parenting time* encompasses a regular parenting or visitation schedule for your child, as well as time during holidays, summers, vacations, and special occasions.

### ***Father's Right To Legal Custody***

You have a right to legal custody equal to that of the child's mother. When custody is contested, the court has to make specific findings of fact on the record. Those findings must reflect all relevant factors and reasons supporting the judge's decision on what is in the child's best interests. In considering whether joint custody is best for your child, the court will examine:

- The parents' and child's wishes.
- The child's interrelationships with family members and others.
- The mental and physical condition of everyone involved.
- The parent likely to facilitate a meaningful relationship between the child and the other parent.

- The acting primary caregiver.
- The occurrence of any coercion, duress, domestic violence, or false reporting of abuse in the custody case.<sup>4</sup>

Not every parent will get custody. The court will not award joint custody when a preponderance of the evidence supports a finding that the parent has a significant history of *domestic violence*. A parent's conviction history of *drug offenses* in the prior year creates a rebuttable presumption that sole or joint custody is contrary to the child's best interests. A parent who is a registered *sex offender*; or who was the *convicted murderer* of the other parent; will not be granted sole, joint, legal, or physical custody, or unsupervised parenting time. With one exception: After considering credible evidence, the court made specific findings that the parent poses *no significant risk* to the child.

### ***Father's Right To Parenting Time***

Parenting time is the parent's right to have the child physically with him or her. A non-custodial father is still entitled to frequent, continuing contact with his child and reasonable parenting time. During your parenting time, you have the right and responsibility to make routine day-to-day child care decisions (consistent with important decisions made by the mother, should she have sole legal custody).

In Arizona, parents seeking joint legal custody are expected to cooperate in creating a written *parenting plan* for each child. The approved plan becomes the family law judge's custody orders and, as such, is enforceable in court. *The custody decree cannot be modified for a full year.* (Only serious allegations of a

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<sup>4</sup> A.R.S. § 25-403: Custody; best interests of child.

dangerous environment may persuade the court to modify custody orders sooner.) If you and your wife are at odds over any aspect of the plan, then the judge will resolve the dispute for you. Cooperation, therefore, is key to staying in control of your parenting plan and avoiding the expense and uncertainty of contested custody litigation.

### ***Father's Right To Physical Custody***

As the child's father, you may seek designation as the primary physical custodian. (Before you make a decision on that, read Chapter 4 on family support issues.) If you decide not to seek primary physical custody and leave the day-to-day child-rearing to your wife, then be sure to maximize your parenting time.

Once a custody action is initiated, the court begins assessing what is in your child's best interests and may award joint custody over either party's objections. You should consider requesting *temporary custody orders* to address parenting time during the divorce, before a trial and permanent orders are forthcoming.

### ***Submitting a Parenting Plan***

With a request for joint custody comes an agreement to submit a written parenting plan. So what exactly is a parenting plan? Think of it as a guidebook delineating how your child will be parented; a blueprint to help everyone in the family adjust positively to life after divorce. Before you begin negotiating a plan with your wife, download a copy of *Planning for Parenting Time – Arizona's Guide for Parents Living Apart* from the Arizona Supreme Court's website at [www.azcourts.gov](http://www.azcourts.gov). The guide is free and includes model parenting time plans

to help you schedule parenting time for a child of any age, from infant to teenager.

A proposed parenting plan is filed with the court and must be approved by the judge. At a minimum, your plan must include the following six provisions:

- 1. Each parent's rights and responsibilities for the personal care of the child and for decisions in areas such as education, health care, and religious training.*
- 2. A schedule of the physical residence of the child, including holidays and school vacations.*
- 3. A procedure by which proposed changes, disputes, and alleged breaches may be mediated or resolved, which may include the use of conciliation services or private counseling.*
- 4. A procedure for periodic review of the plan's terms by the parents.*
- 5. A statement that the parties understand that joint custody does not necessarily mean equal parenting time.*
- 6. A statement that each party has read, understands, and will abide by the notification requirements of § 25-403.05(B) regarding convicted or registered sex offenders or dangerous crimes against children.<sup>5</sup>*

All of the daily situations that parents deal with regarding their child should be addressed in the parenting plan. You are emotionally invested in your son or daughter, and the negotiations with your wife can be intense. But this is not a competition – keep the discussions focused on what is best for your child.

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<sup>5</sup> A.R.S. § 25-403.02: Parenting plans.

As a reference during negotiations, here is a checklist of parenting decisions that must be made:

- Which parent will be designated as having legal custody?
- Which parent will be designated as having physical custody?
- Who will be responsible for the child's medical, dental, and optical care?
- What will be the parenting time schedule for weekdays, holidays, and vacations?
- How will future problems or conflicts relating to the parenting plan be resolved?
- How will the parents decide where the child will attend school?
- What will be the daycare arrangements?
- Which parent will take the child to school and pick up the child from school?
- Where and when will parenting time exchanges take place?
- How will the parents ensure the child's safety?
- How will the parents prevent their conflict from harming the child?
- How will each parent maintain a safe, stable, and nurturing environment for the child?
- How will the child's basic needs (food and clothing), supervision, and emotional well-being be provided for?
- How will each parent help the child maintain a positive, healthy relationship with the other parent, and with others in the family and community?

- How will the child's social, academic, athletic, or other activities be supported (within the parent's financial means)?
- How will extraordinary expenses be handled?
- What will be the notification requirements of any anticipated change to the child's residence?

As you can see, parenting plans cover every aspect of child-rearing. Although modifications are sometimes needed as circumstances change, a comprehensive parenting plan, with contingencies worked out in advance, diminishes the need for court intervention later on.

### ***Resolving Child Custody Conflicts Before Trial***

Child custody is among the most contentious areas of family law. Sometimes the conflict between parents is so intense and persistent, they cannot cooperate and make decisions about their child's future. That is when dispute resolution facilitators may be brought in to help break through the parental impasse. Any or all of these facilitators may be involved in your custody matter: a *mediator*, a *parenting coordinator*, and a *child custody evaluator*.

***The Mediator.*** Should you and your wife reach agreement through mediation, then it is quite possible that a custody trial will be avoided. Mediated agreements are submitted to the judge who, absent objection, signs them as an order. But when no agreement is reached, the court will decide what is in the best interests of the child and dictate custody terms to both parents.

***The Parenting Coordinator.*** Without advocating for either, the parenting coordinator meets with both parents to discuss their concerns about the parenting plan. The coordinator skillfully weaves counseling, parent-

education, and alternative dispute resolution (ADR) techniques into these meetings. While facilitating negotiations, the coordinator assists the parents in reaching a fair settlement – one that is in their child’s best interests, yet still satisfies as many of the their individual needs as is reasonable and practical. The coordinator reports back to the court with recommendations, to which either party may object. The court will approve, modify, or reject those recommendations and may set the matter for hearing.

***The Child Custody Evaluator.*** The child custody evaluator will, after thorough investigation and inquiry, make custody and parenting time recommendations to the court. In determining what is in the child’s best interests, the evaluator interviews the parents, the child, and other family members; and reviews documents and records regarding the child. The evaluator then submits a detailed report to the court with recommendations for legal custody, physical custody, and parenting time. Should a custody trial become necessary, the custody evaluator’s report will be very influential with the court.

### ***The Parent Information Class***

There’s one more custody detail that fathers need to prepare for. In every Arizona divorce with minor children, both parties *must* complete a parent information class within 45 days of the initial court filing. This valuable, time-efficient course is focused on the impact separation and divorce can have on the emotional well-being of a child. The purpose of the parent information program is to enhance each party’s ability to handle family conflicts and child-related issues in a positive way during the divorce and thereafter. Contact the Clerk of the Superior Court where your case is filed for specific information on where and

when the class is offered. After finishing the course, your certificate of completion must be filed with the court.

# **Chapter 4**

## **FINANCES**

### **Preparing for Family Support Issues**

In this chapter, you will read about two important financial issues in divorce: child support and spousal maintenance. In Chapter 3, I discussed many core concepts relating to child custody in Arizona, including legal and physical custody and parenting plans. *In every child custody case there will be a determination of child support.*<sup>6</sup>

#### **Father's Child Support Primer**

A common misconception is that parenting time is dependent upon the payment of child support, but it is not. *Parental access to one's child is not contingent upon the timely payment of child support.* When you are the custodial parent, you cannot obstruct the mother's visitation or parenting time because she is behind in child support payments (and vice versa). Interfering with the other party's parenting time is harmful because it hinders your child's relationship with the mother. Any attempts to enforce the mother's support obligation by withholding parenting time will likely result in a contempt action against you for having prevented access to her child.

Also, be mindful that discussions involving child support are for adults only – that is, for the court, the parties, and the attorneys. Please refrain from

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<sup>6</sup> A.R.S. § 25-403.09: Child support.

talking about child support issues in the presence of your children. You don't want them to equate their value to you with the collection of support dollars.

### ***Calculating Each Party's Support Obligation***

As a father, you need to know how support will be ordered for your child. The *Arizona Child Support Guidelines* are used to determine how much child support each parent will contribute. Because the guidelines are mandatory in every family law case with minor children, this is one reasonably predictable area of divorce. The judge has discretion to make exceptions when results under the guidelines would be unjust or inappropriate in the circumstances. When such exception is taken, the court may deviate from the guidelines by increasing or decreasing the amount of support. Take a glance at the guideline's seven essential premises:

1. The guidelines apply to all children.
2. Paying child support is a priority financial obligation.
3. Spousal maintenance is determined before child support obligations are established.
4. Every parent has a legal duty to support his or her natural or adopted child.
5. Under some circumstances, the custodial parent may be required to pay child support.
6. Child support is calculated on a monthly income basis.
7. Basic child support is capped when the parents' combined adjusted gross income reaches \$20,000 per month; and is also capped with the sixth child.

To estimate the support obligations in your case and begin budgeting, use the free child support calculator on my law firm's website at **[www.sdsfamilylaw.com](http://www.sdsfamilylaw.com)**. You can also download our free Arizona child support calculator apps for your iPhone (shop iTunes) and Android (shop Google play) mobile devices.

Support is based on specific criteria relating to both parents' income and the number of children residing in the home. Understand that the court will not take into account either parent's living expenses in setting child support. Only the parents' income, the parenting time exercised by the non-custodial parent, and the expenses for the child's daycare, health insurance, and special needs are considered. Unless there are exceptional circumstances (such as an autistic child's educational needs), the court will follow the amount suggested by the guidelines.

For most families, the child support guidelines work well. The more challenging cases involve parents with self-employment income or cash-based income which can fluctuate significantly from month-to-month. With a self-employed parent, the court may order a "federally authorized tax practitioner" to assist with income analysis.<sup>7</sup>

Here is a checklist of the information you should have handy when calculating child support:

- Both parents' gross income

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<sup>7</sup> A.R.S. § 25-320.02: Self-employed parent; tax practitioner; definition.

- Spousal maintenance paid or received
- Child's medical, dental, and vision insurance
- Court-ordered child support for children from other relationships
- Expenses for child care and daycare
- Extraordinary expenses for a child
- Additional education expenses for a child
- Number of your children who are age 12 or older
- Month and year of your youngest child's birthday
- Number of parenting time days per year
- Court-ordered arrears paid by the non-custodial parent

### ***The Child Support Order***

The court's child support order must include the exact amount of child support, the date payments begin, and the date payments end. The judge is required to make specific findings for the record, including each parent's gross and adjusted gross income, the basic and the total child support obligation, the non-custodial parent's proportional share, and any attributed income in excess of the minimum wage. When a child emancipates and becomes self-sufficient, the amount of support does not automatically reduce. To avoid an unintentional overpayment, the non-custodial parent needs to return to court and seek an order modifying child support.

The support is paid until the child reaches age 18, completes high school, or emancipates. There is one important circumstance, though, when the court may order child support to continue into the child's adulthood.

## ***Support for the Disabled Adult-Child***

With a young person's severe disability, the court may order child support to continue beyond the age of majority. Either parent may seek a support order, even if the child was an adult when the divorce was filed or will be an adult when the final decree is issued. For the court to order such support, the adult-child must be "severely mentally or physically disabled" such that he or she "is unable to live independently and be self-supporting." Furthermore, the disability must have manifested during the child's minority.<sup>8</sup>

There is no requirement that you or the mother be appointed guardian or legal custodian before a support order for a disabled adult-child may be issued. However, when no guardian or custodian is appointed, the adult-child should be joined as an indispensable party to the support proceedings. In that way, the court will have authority over the support matter and the adult-child's rights and interests will be protected.<sup>9</sup> The court may order support paid directly to the adult-child or to the parent who provides necessary care.

## ***Making Child Support Payments***

You and your spouse may agree to support payments in excess of the guidelines, for example to pay for private school tuition or travel expenses. To be enforceable, the agreement to provide additional support dollars must be written into your separation agreement and included in the court's support order.

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<sup>8</sup> A.R.S. § 25-320: Child support; factors; methods of payment; additional enforcement provisions; definitions.

<sup>9</sup> *Gersten v. Gersten*, 219 P3d 309 (Ariz.App. 2009).

Where does the money go? Support payments are made directly to the custodial parent or to the *Arizona Support Payment Clearinghouse*, as the case may be. To be credited against the payor's obligation (whether that is you or the child's mother), payments made directly to the custodial parent must be court-ordered, or made pursuant to a written support agreement.

### ***How Is Child Support Enforced?***

Unquestionably, both parents must meet their child support obligations. Those who do not pay, pay less than ordered, or pay sporadically will risk contempt proceedings, fines, and jail time.

Civil and criminal contempt proceedings are common actions taken against Moms and Dads who violate child support orders. The court may order the payor-parent jailed and fined; may suspend a driver's license, professional or occupational license, and recreational license; may seize assets and intercept state tax refunds. Furthermore, the parent who "knowingly fails to furnish reasonable support" may be prosecuted for a class 6 felony.

Under the *Child Support Recovery Act* and *Deadbeat Parents Punishment Act*, federal prosecution for willful non-payment of child support is possible when the non-custodial parent and the child reside in different states. Parents who willfully fail to pay child support face federal penalties, including fines and incarceration.<sup>10</sup>

Statistically, more mothers than fathers become custodial parents. As a direct consequence, fathers are more likely to run into legal problems for

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<sup>10</sup> 18 U.S.C. § 228.

nonpayment of child support. However, if the mother is under a support order, all sanctions equally apply in the event she fails in her child support obligation.

## **Husband's Spousal Maintenance Primer**

In a divorce or legal separation, the court may order one spouse to provide financial support for the other spouse. Some states refer to spousal support as *alimony*, but in Arizona it is known as *spousal maintenance* and it isn't just for women.

Be fully prepared to negotiate the issue of spousal maintenance in your divorce. Unlike child support, unfortunately, there are no guidelines or statutory formulas to calculate the amount to be paid. Without any mandatory guidelines, and with the broad discretion the courts have in determining the amount and duration of spousal support, such awards lack uniformity and predictability.

Either party may request an award of spousal support, regardless of who filed for divorce. With the exception of a covenant marriage, Arizona courts cannot consider marital misconduct when deciding whether to award spousal maintenance. To determine the appropriateness of a spousal maintenance award, the court conducts a two-step analysis.<sup>11</sup>

### ***Step One: Eligibility***

As a threshold determination, the party who seeks a maintenance order against the other spouse must first establish eligibility. Be prepared for questions like the following in this initial step:

- Does the spouse seeking maintenance have sufficient property?

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<sup>11</sup> A.R.S. § 25-319. Maintenance; computation factors.

- What property will be apportioned to that spouse in the divorce?
- Is the spouse self-sufficient without additional financial help?
- Does the spouse need to stay home to care for a child?
- Is this spouse able to earn enough to become reasonably self-sufficient?
- Did the marriage last many years, maybe a decade or longer?
- Will the spouse's age make self-sufficiency through employment impossible?

Depending upon the court's findings on the eligibility factors, it may or may not order maintenance for the party seeking financial assistance. When maintenance is needed because a spouse cannot provide for his or her own reasonable needs, the court will then determine an appropriate amount and duration for such support.

### ***Step Two: Computation***

In the second step – *deciding an amount and duration for an award* – the court considers all factors relevant to spousal support. Even though judges have broad discretion in awarding maintenance, 13 factors provide a statutory framework for the court's analysis:

1. What standard of living was established during the marriage?
2. How long did the marriage last?
3. What is the age, earning ability, job history, emotional health, and physical condition of the spouse seeking support?
4. Is the other party able to meet his or her own financial needs while supporting the other spouse?

5. How much can each spouse earn in the labor market and what financial resources are available to each of them?
6. How did the spouse seeking support contribute to the other's earning ability and career?
7. Did the spouse seeking support lose out on employment opportunities in benefiting the other's career?
8. Once the divorce is final, how will the parties contribute to their children's educational expenses?
9. What financial resources and property will be available to the party seeking support?
10. How much time is needed for the party seeking support to train and study for appropriate employment?
11. Did the spouse hide property and assets or commit other destructive or wasteful acts?
12. How will healthcare insurance costs compare after the divorce is final?
13. Did either party abuse the other spouse or a child?

The court then decides how much money one spouse will be ordered to pay the other and for how long.

Not knowing with certainty how the court will decide the issue of spousal support in your divorce should be sufficient motivation for you and your wife to try and work out a fair and reasonable agreement (with the help of your attorneys, of course). Once an agreement on spousal maintenance is successfully

negotiated or mediated, the terms and conditions are included in your separation agreement, which then becomes the court's order.

### ***Seeking Temporary Orders***

Before permanent orders are in place, problems regarding the need for financial contributions to household expenses, among other things, tend to surface fairly quickly. When necessary, either spouse may request temporary court-ordered relief for the interim, before a trial is scheduled. Interim orders govern the parties' actions during the divorce proceedings and may address spousal maintenance, child support, access to personal items, and many other aspects of the divorce.

Motioning for temporary maintenance often initiates more serious negotiations. Here's why: When the court is likely to order interim spousal support, the amount set temporarily may influence the court when it sets a permanent maintenance award. When interim orders are not requested, the party asked to pay support may argue that it is unnecessary – using the absence of temporary support as evidence that a permanent award is not needed.

### ***Starting, Stopping, and Modifying Spousal Maintenance***

The court's maintenance order will include the amount, how often payments are to be made (lump sum, monthly, annually, or other), when payments are to start and stop, and whether the award can be modified. If you and your wife did not expressly agree to some other termination event or the decree is silent on the issue, then spousal support terminates on the death of either party or upon the recipient's remarriage.

Unless the final decree states otherwise, spousal support orders may be modified or terminated after the divorce is final on “a showing of changed circumstances that are substantial and continuing,” as with a change in health insurance availability.<sup>12</sup>

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<sup>12</sup> A.R.S. § 25-327. Modification and termination of provisions for maintenance, support and property disposition.

# Chapter 5

## PROPERTY

### What's Hers and Why

In the previous chapter, I covered two core financial matters in divorce: *child support* and *spousal maintenance*. There is another central financial matter to discuss – the division of property. Arizona is a community property state and, as such, all marital property must be equally divided between you and your wife in the divorce. (You may negotiate a fair, but less than equal split of property, as I discuss below.)

Before jumping head-first into who gets what, you need to know two things. First, there is a presumption that all assets and debts acquired during the marriage belong to the community. The spouses are presumed to own an undivided one-half interest in the marital assets and share equal responsibility for the marital debts. The court will divide your community property equally, unless you have a separation agreement that provides for an unequal division. Second, the judge has broad discretion over the final division and distribution of community assets and debts. Most parties negotiate their property allocation to avoid court intervention, arriving at a voluntary settlement to be included in their separation agreement.

Prepare yourself for the division of assets and debts in your Arizona divorce, beginning with what's hers and why. Examine each asset very carefully before determining whether to label it "S" for sole property or "C" for community

property, particularly when community money paid for any part of the asset or was used to maintain it.

### ***The Good: What You Keep in the Divorce***

All property owned by you and your wife will be categorized as either *separate property* or *community property*. Just as your separate property is in your control, your wife's separate property belongs only to her and is not subject to division in a divorce. The first step in allocating property is to identify separate assets and debts, determining what each of you has the right to keep.

Identifying community assets and debts for division is the second step in the property allocation. Marital property does not lose its character as such because only one spouse's name is on the title or account. For example, the sedan purchased with wages during the marriage and titled in your wife's name only is still community property.

There are a few important exceptions to the presumption that assets acquired during marriage belong to the community. Those exceptions are limited to instances where the asset was either owned before the marriage took place, or was acquired by gift or inheritance during the marriage. If your wife was gifted a diamond anniversary ring during the marriage, then that is her separate property. If you inherited real estate in Maricopa County during the marriage, then that real estate is your sole and separate property. (There is an exception to that, too. See my discussion below on *transmutation*.)

Understand that any gift of money or property that you receive from your parents or others before the divorce is final will remain your sole and separate property. Also, any inheritance you receive by Last Will and Testament or

intestate succession during the marriage will also remain your sole and separate property and will not be divided in a divorce.

### ***The Bad: Challenging Separate Property***

A separate asset can be transformed into the marital property of both spouses, subjecting it to division in a divorce. This depends upon how the owner-spouse used the separate asset during the marriage. Most property divisions involve some transmuted property, particularly when the couple was married a long time or made many acquisitions during the marriage. Therefore, you should be prepared for the possibility of transmuted assets in your divorce.

The so-called *transmutation* of separate property can occur by:

1. Agreement between the spouses;
2. Gift from one spouse to the other during the marriage;
3. Commingling separate property with marital property.

Assume, for example, that your wife received a \$175,000 testamentary gift during the marriage; that inheritance is her separate property. She takes the \$175,000 inheritance, buys a cabin in Prescott, and puts the title in both your names as “community property.” In a divorce, the cabin is marital property by gift and must be split 50/50 between the two of you.

A portion of the separate asset’s value may remain separate property, while a portion becomes community property. Say, for example, that your wife used her \$175,000 inheritance to buy the cabin as her “sole and separate property,” and does not put you on the title. Everyone in the family enjoys the cabin in the cool pines and, when it needed updating, community money was used for a major remodel. The cabin now represents a blend of separate and

marital interests. Even though your wife holds the title, you would be entitled to a share of the community portion.

### ***Reflect on Asset Acquisition***

In general, establishing the character of an asset as either separate or community is determined by the circumstances surrounding that asset's acquisition. That designation is not altered because of a subsequent marriage – separate property acquired while unmarried remains separate property after the wedding. When community funds are used to pay down a separate mortgage or used to make improvements on separate property, then the non-owning spouse is entitled to *reimbursement* for his or her share of community money spent on the other spouse's separate property.

Assume that you owned your condo before you were married, a separate asset. During the marriage, however, community money was used to pay down your mortgage, reducing the principal owed on your loan. That reduction in principal would be a community asset subject to 50/50 division with your wife. Similarly, if community money was used to improve your condo, and those improvements increased your property's value, then the increase in value is a community asset, too.

When the facts are not clear-cut and the property's appreciation in value could be due to several factors, then the ownership issue becomes much more muddled. To sort out the marital interest, the portion of appreciated value resulting from the infusion of community funds must be determined, and that sometimes requires expert analysis.

## ***The Ugly: Dividing Debts in Divorce***

I know from years of experience that one of the first things you will want to do is disavow any responsibility for your wife's credit card debts. However, in Arizona community debts are divided between the spouses in a divorce and, just as with assets, there are separate debts and community debts. Debts that arose during the marriage, but before the divorce was filed, will be allocated as community obligations and will be divided between the two of you.

There is some good news, though. Any debt incurred before the marriage remains a separate debt and is not a shared marital obligation. You will not be paying a portion of your wife's pre-marital plastic surgery bill. That is also so with debts incurred by your wife *after the divorce action is initiated*, although there are exceptions.

## ***Negotiating a Property Settlement***

Every Arizona divorce involves negotiation and settlement – the parties may freely designate *any* of their assets and debts as community property or separate property. The family law judge can depart from the presumed 50/50-split when the spouses have a *separation agreement* providing for an unequal division of their marital property.<sup>13</sup> The separation agreement you reach with your wife will be included in the court's final decree of dissolution. In the absence of agreement, a trial will be held and the judge will make a final decision on who gets what.

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<sup>13</sup> A.R.S. § 25-317: Separation agreements.

When you plan for negotiations, consider scheduling a series of short sessions with your wife in *neutral* territory. Listing and valuating everything you own, then planning how each asset or debt will be divided takes time, patience, and cooperation. The task of dividing marital property can become much more burdensome when parties rely (and pay) their lawyers to do the dividing for them. Instead, try to reach an agreement on the division of your property as soon as possible. The sooner an agreement is reached, the less money you will spend on attorney's fees.

### ***Negotiating Strategy***

Negotiating to get the results you want takes some strategizing. Think before you act. When your wife really wants you to do something, *you* have negotiating leverage. If she wants you to stay in the marriage, for example, then leave the home before you begin negotiations – she'll be motivated to cooperate in an effort to bring you back. If you stay and try to negotiate, then you are in a weakened position because your spouse wants you to stay and has little incentive to agree to anything other than the status quo. In the alternative, if your spouse really wants you to leave, then begin negotiating immediately while you are still in the home and refuse to leave until the matter is settled.

*When there is a risk of domestic violence, do not take chances! Always put your safety and the safety of your children first, even if that means leaving the home when you really want to stay there.*

## ***Valuating Community Assets and Debts***

Only after each item of community property has been accurately valued will the judge divide it, which makes valuating assets an important phase of property division. To get accurate values on your property, turn to property appraisers, real estate agents, CPAs, business valuers, and forensic accountants.

***Property Appraisers*** estimate the market value of real estate. A *certified general appraiser* is used for commercial and all other types of real property. A *certified residential appraiser* is used for residential real estate that can house five or fewer families. An Arizona licensed real estate appraiser prepares a written report of the property, including potential uses, comparable properties in the vicinity, construction methods and materials used, and so on.

***Real Estate Agents*** can offer detailed information about the market areas they serve. An experienced agent will provide useful information about other properties for sale in the area, the average listing period up to point of sale, and the average selling price.

***Personal Property Appraisers*** of furniture, antiques, art, guns, china, glassware, jewelry, and the like, are frequently affiliated with auction houses and antique stores. In this profession, experience is essential to a realistic estimate of value. More than one appraiser's expertise may be needed to get a complete valuation of all the items.

***Business Valuers and Forensic Accountants*** are certified public accountants (CPAs) licensed by the state. They investigate the enterprise's financial operations by interviewing key personnel and analyzing business

records. After completing an investigation, the valuator prepares a summary report with an estimated value for the business.

How property is divided in your divorce will have far-reaching financial consequences for you both, so be diligent in locating and valuating all community interests. Although it is unwise and can seriously undermine a party's case when discovered, some party's will attempt to conceal assets from division. *When either party deliberately hides assets, direct action must be taken to bring those assets before the court for division.* Too often, a party will plan to conceal property before the divorce petition is filed. Be on the lookout for possible concealment in your divorce. You may need to hire a *private investigator* to locate and identify marital assets that have been hidden by your wife to avoid division.

When concealment of assets is suspected, gather and photocopy all financial records before a petition for dissolution is filed. And if you haven't yet separated, consider safe-keeping those records in a secure location outside the home where they can be retrieved later.

### ***Dividing Pensions and Retirement Accounts***

In Arizona, wages earned during the marriage are considered property of the community. Similarly, deferred compensation benefits derived from employment during the marriage (pensions, 401(k)s, IRAs) are also marital assets to be divided in divorce. The pension plan does not need to be vested for it to be a marital asset. When you participate in a traditional defined benefit plan, an actuary is used to establish your retirement age and life expectancy. If you

participate in a profit sharing plan, 401k, or IRA, then the value of the plan is based on its current balance. All accounts funded during the marriage will be divided. (In negotiating a property settlement, you and your wife may agree to keep your respective retirement accounts intact.) When valuating and dividing qualified pensions and retirement accounts, be mindful that these often combine separate and community property interests. As with any other asset acquisition, if the pension or retirement account was completely funded or earned prior to the marriage, then the plan is the separate property of the participant spouse and is not subject to division in divorce.

The pension plan administrator will not divide any pension without a Qualified Domestic Relations Order (QDRO). The court's QDRO accomplishes two things. First, it assures the required payment is made to the "alternate payee," effectively preventing the employee-participant from disposing of that share in violation of the divorce decree. Second, the QDRO ensures that each party receiving a portion of the pension is responsible for a corresponding share of the tax liability.

The final decree of divorce will establish the parties' interest in the respective pensions, but the QDRO – the court's order to the retirement plan administrator – is necessary to carry out that division. Because of the QDRO's complexity, I recommend that you hire an experienced QDRO attorney – a legal specialist in the field.

### ***Division Upset with Marital Waste***

There is one more property division issue you need to know about – that is, the impact of *marital waste*. Understand that both spouses are free to dispose

of their separate property in any legal manner, prudently or imprudently. But when property is held by the community, one spouse cannot tap into and deplete the marital asset pool without consequences.

If a party wastes community assets, which is a detriment to the marriage, he or she will have to return one-half the amount wasted to the other spouse.

Examples of activities that can cause marital waste are:

- Gifts and money spent on an extramarital affair
- Gambling losses
- Frivolous, unjustified, or fraudulent spending
- Costs of excessive alcohol consumption
- Illegal activities and drug use
- Legal fees and property loss to forfeiture because of one's criminal acts
- Excessive gifting to one's children from a previous marriage or to other family members
- Fault-based loss by foreclosure on the marital home
- Loss or damage to marital property and business interests

In allocating property, the family law judge examines excessive, abnormal expenditures, and the destruction and concealment of marital assets. Any indication that there was a fraudulent transfer or fraudulent disposition of community property will be scrutinized, too.

When a spouse commits marital waste, the loss is recovered from his or her share of the community property. But if the marital assets are insufficient to make the injured spouse whole, then the court may issue a money judgment

against the responsible party for the balance still owing. The injured party becomes a judgment creditor after the divorce and may collect on the debt according to law, including garnishment of the former spouse's wages.

## Chapter 6

### SAFETY

#### Preserving Privacy & Maintaining Security

In the first chapter of *Why Ask for Directions, A Man's Guide to Arizona Divorce*, I discussed taking precautionary measures to protect your privacy and security before, during, and after the divorce. This chapter covers the risks and repercussions associated with social media networking.

In Arizona and elsewhere, photographs and messages on social networking websites are strong evidence in court. Posting pictures and personal information about yourself on a public forum like Facebook and MySpace is an open invitation for your wife's attorney to collect evidence against you. Using social media to network with family, friends, and associates can be great so long as you know that *anything you post can be used against you in family law court!*

#### ***Online Admissions as Evidence***

When you post to websites like Facebook, any content relevant to your divorce may be introduced as evidence against you. Posting online publishes information and, once published, it can be lawfully gathered and used in court. This means that new and old posts can, and do, influence matters of child custody, parenting time and visitation, child support, spousal maintenance, and the division of marital assets and debts in divorce.

At a minimum, you need to be very discrete with the messages you share online. Photographs of the wild *Sea of Cortez* cruise party will not play well for you in child custody proceedings. Anything posted online can affect your

reputation in the community and, once published, it may never go away. Your wife's attorney could use online evidence to demonstrate that you are an "excessive spender," an "irresponsible parent," or "drug and alcohol dependent." All it takes is a few well-chosen photographs and you'll find yourself on the defensive.

Online evidence can also be used to refute testimony, as when your wife's post contradicts a previous statement she made in the divorce. Your attorney will exploit that post as evidence establishing her lack of credibility and propensity for untruthfulness.

Consider these examples:

- A photo of an intoxicated parent (establishing a lack of child supervision in a custody dispute).
- Images of luxury items like tropical vacations and expensive cars (establishing undeclared income or hidden assets when determining child support or spousal maintenance).
- Evidence that a spouse is LinkedIn at work (establishing earning capacity).
- A photo of the spouse sunbathing poolside in Las Vegas when claiming to be at a job interview in Phoenix (establishing failure to seek employment).

### ***Social Media Evidence Is Big***

With social networking commonplace, it is easy for divorce attorneys to collect damaging evidence against an opposing party. For evidentiary purposes, social media includes cell phone use, emails, online photographs, uploaded

videos, posts, text messages, comments, blogs, microblogs, tweets, and the like. Opposing parties and their attorneys routinely look to Facebook, LinkedIn, Twitter, YouTube, MySpace, blogs, and other social media forums to gather evidence for use in court. Therefore, it is safe to assume that your attorney, and your wife's attorney, will do the same.

In addition to maintaining a low online profile during the legal proceedings, follow these recommendations to protect your privacy and reputation:

- Consider logging off entirely until the divorce is final.
- Never boast about or post photographs of big-ticket purchases and vacations.
- Always think before you post. Consider the legal ramifications of publishing anything personal.
- Exercise restraint in posting any photographs of yourself.
- Clean up your image and your page. If someone else (a friend, your teenager) has detrimental photos on their webpage evidencing your questionable behavior and judgment, then do whatever you can to get those removed, too.
- When you want full custody and claim to be the more responsible parent, make sure that your page reflects that – remove the “wild and crazy” photos and explosive rants.
- Do not discuss, comment, or tweet about the divorce, the judge, your wife, or the attorneys.

- When you must post a message, carefully choose your words, say what is necessary and avoid graphic language.
- Do not post anything that your child should not see.
- Do not alienate your wife from the kids.
- Enable privacy settings and set them high. Even when you have blocked your wife, a well-meaning friend may forward your post to her (and she'll forward to her attorney).
- Search for web information about yourself to heighten awareness of online vulnerabilities; share the results and concerns with your divorce attorney.

Always be mindful that something posted online may be impossible to retract. Those you friend – co-workers, neighbors, family members, best buddies – may share your posts and information with others. To undermine your position in the divorce, all your wife's attorney needs is a compromising statement or photograph that establishes where you were, who you were with, or what you were doing.

### ***Gathering Online Evidence Against Your Wife***

Lawfully gathered, relevant, social media evidence may be used in court against you and, in the alternative, against your spouse. Your lawyer's use of online evidence could have a significant impact on your divorce. So inform your attorney of your wife's social media networking. When you observe potentially useful online information about her, relay those findings to your attorney as well.

Negative social media evidence can weaken your wife's position during divorce negotiations. Such evidence can be used to disparage her character and

prove she lied. Consequently, she may be more willing to settle rather than have the information presented as evidence to the judge at trial. Why? When she makes a statement in the divorce and your attorney presents evidence exposing the statement as a lie, she loses credibility with the court (and child custody evaluator), and exposes herself to personal and professional embarrassment and humiliation.

Only lawfully obtained evidence is admissible in court. When the collection of information requires a subpoena, online activities beyond social networking can be gathered from a provider of online services. In one recent case, a subpoena was used to gather information about a party's interactive gaming activity. The parent was supposed to be home-schooling the child, but was gaming in the *World of Warcraft* for up to 10 hours per session instead. The online entertainment evidence led to primary legal custody going to the other parent.

### ***Criminal Internet Acts***

Even when minimal animosity is apparent in your divorce, guard against internet activities that could violate Arizona law and become dangerous – namely *cyber-spying*, *cyber-stalking*, and *cyber-harassment*. The “cyber” simply refers to the use of any computer device to spy, stalk, or harass another person.

***Cyber-Spying.*** When computers or electronic devices are used to secretly obtain intelligence, the act is cyber-spying. If someone eavesdrops on another person by intercepting a wire or electronic communication without permission, then the unauthorized tap is spying. As tempting as it may be to acquire information for the divorce by eavesdropping on your wife's private

emails or telephone calls, the nonconsensual interception of her private conversations is a crime.

Cyber-spying in Arizona – a Class 5 felony – involves the intentional interception of another’s private communication. Spying is a crime even when one of the parties to the telephone conversation or email communication is a spouse.<sup>14</sup> Persuading someone else to accomplish the interception is not a defense to that crime. In fact, it is a felony to trick, or connive, a communication service provider into disclosing the contents of another person’s electronic communication. Merely possessing a device that could be used to intercept communications, with the intent to use it, can be a criminal act.

Do not spy on your wife’s computer or emails, doing so will only hurt your case and could land you in jail. If you suspect that your wife is eavesdropping on your private communications, notify your attorney immediately.

***Cyber-Stalking and Cyber-Harassment.*** Another criminal act is cyber-stalking, which occurs when the internet or some electronic means is used to stalk another person. Cyber-harassment involves using email, instant messaging, blogs, and the like, to torment and harass someone. In Arizona, cyber-stalking directed at a specific individual is a form of intentional criminal harassment – a Class 1 misdemeanor.<sup>15</sup> Any of the following acts committed by one spouse against the other may be criminal harassment:

- Anonymously or otherwise contacting, communicating, or causing a communication with the other spouse by verbal,

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<sup>14</sup> A.R.S. § 13-3005: Interception of wire, electronic and oral communications; installation of pen register or trap and trace device; classification; exceptions.

<sup>15</sup> A.R.S. § 13-2921: Harassment; classification; definition.

electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses.

- Continuing to follow the other spouse in or about a public place for no legitimate purpose after being asked to desist.
- Repeatedly committing an act or acts that harass the other spouse.
- Surveils (or causes another person to surveil) the other spouse for no legitimate purpose.
- On more than one occasion, making a false report to law enforcement, a credit agency, or social service agency.
- Interfering with the delivery of any public or regulated utility to the other spouse.

***Aggravated Harassment.*** Restraining orders are often sought in domestic violence cases in Arizona and elsewhere, but they may also be issued to protect a spouse from the other party's stalking and harassment. If the judge's *order of protection* or *injunction against harassment* is violated, then the defendant-spouse may be charged with a Class 6 felony for *aggravated harassment*. Repeated harassment can result in conviction of a Class 5 felony, which is more severely punished.<sup>16</sup>

### ***Domestic Violence in Divorce***

If the opposing party is violent, or threatens violence, towards you or your children, then immediately petition the court for a restraining order to keep her away (animals may also be protected). The order of protection prohibits a

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<sup>16</sup> A.R.S. § 13-2921.01: Aggravated harassment; classification; definition.

defendant from contacting you and any other protected person at home or at work. Typically, such restraining orders are granted *ex parte* with the hearing scheduled at a later date.

An order of protection requires that the defendant stay away and remain out of contact with the protected person. Although the order is valid for a year, it can be modified or quashed (dismissed) by the court. The defendant can be arrested for violating the protective order, even when the protected person initiated the contact. The court may also order that the defendant not possess, receive, or purchase firearms or ammunition, and can order surrender of those firearms to law enforcement upon service of the protective order.

For the court to issue an order of protection, a family or intimate relationship is necessary between the protected person and the defendant. In addition to a spouse, many individuals may be restrained – a previous spouse, blood relative, someone who lives with or lived with the person, the father or mother of the unborn child, and someone in a current or past romantic relationship with the person.

***What Should You Do?*** Keep a journal, or log, of events with dates and descriptions of any incidents involving potential or actual violence, threats of violence, stalking, cyber-stalking, and harassment. Detail examples of your wife's poor judgment, alcohol or drug abuse, violent behavior, or threats of violence. Take notes of the conversations you have with her over issues in the divorce. Save emails or written exchanges with your wife. Even with an order of protection in effect, take every safety precaution possible and prudent under the circumstances. And remember...

Never take chances with your safety or your children's safety.

**When in danger, DIAL 911.**

## **Chapter 7**

### **COACH** **Training for a Better Life After Divorce**

Before you travel too far down the road of marital dissolution, take some time to reflect on what your lifestyle will be like after the divorce is final. This is an opportunity to reinvent yourself; to move forward in the pursuit of more meaningful objectives.

Moving on with your life requires that you let go of lingering hard feelings directed at your soon-to-be ex-wife. In my experience as an Arizona divorce attorney, the more blame in the divorce, the more the children will suffer, the longer it will take to resolve issues, and the more money it will cost both parties. Blame is toxic and will only hinder your ability to move forward with your goals and a new life. Stay focused on the future, and what you must do for yourself and for your kids.

#### ***Setting Goals for Your Future***

Landing on your feet after the divorce depends, in part, on what happens during the legal process. Divorce requires preparation, strategizing, and goal-setting. To achieve long term goals (such as gaining physical custody of your kids), you need to communicate important objectives to your attorney very early in the case. Now is the time to contemplate on what the future holds for you. Setting goals involves asking key questions like these:

- What will you need right away?
- What will your lifestyle be like?

- How will you support your children?
- What insurance coverage will be needed? Health/Dental/Vision?  
Homeowners? Automobile? Life? Disability?
- Will you send your kids to college?
- Will student loans be necessary? How much of a financial burden can you carry?
- Where will you live?
- Will a job opportunity require relocation to a different city or state?
- Will spousal maintenance be needed?
- Will family support obligations delay business pursuits or employment objectives?
- When do you expect to retire?
- What changes will you make to your estate plan? Last Will and Testament? Power of Attorney? Living Trust?

Establishing long-term and short-term goals is an important, necessary step in the divorce process, so take the task seriously and write your goals down on paper. Think of long-term goals as the theme underscoring the vision you have for the future. Your short-term objectives should keep you on track to accomplish those long-term goals. For example, if your long-term goal is to become a commercial real estate appraiser, then your short-term goals would include completing the education, training, and certification requirements.

With a clear vision for the future, implementing strategies to achieve your goals will become much easier during the divorce and thereafter. Before taking a

position on any issue in the divorce, always reflect on the goals you have set for yourself and stay focused on the desired outcome.

### ***Learn What the Law Requires***

Success in achieving a desired outcome in the divorce depends largely upon both parties' legal rights. Learn what is possible under the laws of this state and adjust your expectations to fit within those parameters.

As an example, consider how the law deals with issues involving child custody and parenting time. Your wife may seek primary physical custody and ask to limit your visitation to one weekend a month during the school year. Her expectations must be adjusted to account for your legal right to parenting time and for what is deemed to be in the best interests of the child.

When you envision your future and begin setting goals, do so with a firm understanding of what is legally possible under Arizona law.

### ***How to Reduce the Cost of Your Divorce***

Every divorce involves unique circumstances and complexities, but there is one commonality – the need to keep attorney fees and legal expenses under control. Here are six money-saving tips to help you keep the costs associated with your divorce at a minimum.

#### **1. Start Your Divorce Education Today**

Educate yourself on the family law issues that are relevant to your case. Just as with any new job, once you have a reasonable understanding of the task at hand, your efficiency will improve markedly – including an improved capacity to focus negotiations with your wife and discussions with your attorney.

You need to learn more about the routine domestic relations issues that will arise in your divorce. Do you have children? Learn what is involved in child custody, parenting time, and child support. Are you a small business owner? Learn how the division of community assets and debts will affect your company's future. Are you a service member? Learn how military pensions are divided in divorce.

Use my law firm's educational website as a reliable resource to accompany *Why Ask for Directions? A Man's Guide to Arizona Divorce*. We designed [www.sdsfamilylaw.com](http://www.sdsfamilylaw.com) specifically around Arizona divorce and child custody. All of the legal information you need to get started in your divorce can be found there and access is free.

Set aside time each day to study the general concepts of divorce, child custody, child support, spousal maintenance, and property division, familiarizing yourself with the legal terminology and procedures. As a result, you will grasp issues and strategies more quickly, with less explanation time needed from your attorney. The more knowledgeable you are about the issues in your divorce, the more informed your decisions will be.

## **2. Avoid Litigation to Resolve Disputed Issues**

Litigation is a very expensive method for resolving disputed issues in a divorce. So, if you really hope to save money, avoid litigation at every opportunity. (And *never* attempt to use litigation as a way of punishing your wife.) Whenever possible, agree to alternative dispute resolution (ADR) methods, like mediation, to help resolve disputes. Once the list of issues is winnowed down

to what simply cannot be resolved amicably through negotiation and ADR, then those are the remaining matters to be vigorously litigated at trial.

### **3. When You Have Agreement, Write It Down**

When you and your wife come to an agreement on any issue in the divorce, be sure to encapsulate that agreement in writing. Is there agreement on who will take which vehicle? Write it down. Is there agreement on who will stay in the marital home? Write it down. Is there agreement on how your retirement accounts will be divided? You get the picture. Every agreement represents one less issue to be resolved through negotiation, mediation, or litigation.

### **4. Hire an Attorney With a Reasonable Fee Arrangement**

Attorneys are not clairvoyant, but they should anticipate the proceedings and how many attorney hours are likely to be involved at each step. An attorney's billable rate must be discussed at the initial consultation. So you can budget accordingly, you need to know how often the attorney bills, how much of a retainer fee is required, and whether different services have different rates. Before you hire, review Chapter 2 on how to choose your attorney wisely.

### **5. Apply a Cost-Benefit Analysis to Every Issue**

The adage “choose your battles wisely” has application in divorce. Not every issue is worth fighting over, so be practical and selective about what you want to spend your divorce dollars on. When you look at every issue from a cost-benefit perspective, you cannot help but stay focused on getting the divorce finished and done with.

For example, consider the prudence of paying your attorney to negotiate the division of a used-microwave oven as opposed to negotiating a reduction in your obligation to pay spousal support. Which is more important? This example may seem silly, but people do get caught up in their emotions and what they perceive to be a fairness issue. During divorce negotiations, focus on the important issues and let the little things go by the wayside.

## **6. Do Much of the Basic Leg-Work Yourself**

The time and effort you put forth toward being fully prepared will save you money. When your attorney asks for photocopies of all financial accounts, be thorough and provide complete copies. You want your attorney to be businesslike and efficient, you should be the same. Maximize your attorney's time and do not waste it. For example, you do not need to speak directly with your lawyer (and pay the attorney hourly rate) when the legal assistant has the information you need.

No matter which member of your legal team is on the telephone with you, keep your conversations brief and to the point. When you have a conference scheduled with your attorney, be fully prepared for the issues to be discussed. When in negotiations, take reasonable positions even when your wife does not. Always be mindful of the need to steer clear of litigation whenever possible. And never forget the adage “time is money” – it is the attorney’s time and your money being spent.

By taking a practical approach to cost reduction at each stage in the divorce, you will enjoy significant savings over the entire process. A divorce really

can be quite economical, especially when the parties are cooperative with each other.

## **About the Author: Scott David Stewart, Esq.**

Author Scott David Stewart is an Arizona licensed attorney whose law practice focuses exclusively on family law and domestic relations. Mr. Stewart is AV Rated by Martindale Hubbell and rated “superb” by AVVO. He is a member in good standing with the State Bar of Arizona, Maricopa County Bar Association, and American Bar Association.

Early in his legal career, Mr. Stewart worked as a Deputy County Attorney in the Major Crimes Division of the Maricopa County Attorney’s Office. As a felony prosecutor, Mr. Stewart successfully prosecuted thousands of serious felony crimes including domestic violence, aggravated assault, and vehicular and drug crimes. While at the County Attorney’s Office, Mr. Stewart honed his trial skills and developed the strategies for success that he continuously implements in his law practice today.

The one haunting reality that Mr. Stewart observed first-hand as a prosecutor was the importance of passionate legal representation on behalf of those who, all too often, have little or no voice in the legal process affecting their lives. In divorce proceedings particularly, the children’s voices and needs are often relegated behind the desires of their parents. Because of this, his primary goal has always been to ensure that children are the focal point of any dispute between parents.

In his early days, after graduating from Northern Arizona University with a Bachelor of Arts Degree in Speech Communication, Mr. Stewart attended the Illinois Institute of Technology, Chicago-Kent College of Law where he received

his Juris Doctor. Chicago-Kent's outstanding reputation for producing trial attorneys, as well as their signature certificate program in Litigation and Alternative Dispute Resolution, made this renowned institution his law school of choice.

During law school, Mr. Stewart became a certified mediator with the Center for Conflict Resolution and successfully mediated high conflict landlord-tenant disputes for Chicago's Cook County Circuit Court. He participated in the law school's criminal defense clinic where, along with several other law students and their clinical professor, the author researched, investigated, and uncovered evidence proving a death row inmate's innocence. You may have seen Mr. Stewart profiled as a law student on the nationally syndicated television show **Extra®** and numerous other local media news stations.

The hands-on experience gained in law school taught the author those essential litigation, investigation, and negotiation skills that he now utilizes so persuasively in representing his family law clients.

Born and raised in Phoenix, Mr. Stewart is a first generation Phoenician with strong community ties to the *Valley of the Sun*. The son of a small business owner, Mr. Stewart gives much credit to his parents for helping him develop an entrepreneurial spirit and strong emphasis on core values such as integrity, respect, responsibility, leadership, work ethic, and family. These values guide the author daily in his representation of family law, divorce, and child custody clients.

As the founding attorney of the Law Offices of Scott David Stewart, pllc – an Arizona boutique family law firm with offices in Phoenix, Chandler,

Scottsdale, and Peoria – Mr. Stewart’s vision was to establish a unique law firm. One law firm singularly focused on the clients’ experiences when dealing with difficult and often intensely emotional legal matters involving divorce and family law. As evidenced by so many glowing testimonials, clients benefit tremendously from the firm's exclusive family law and domestic relations representation; the attorneys’ collective years of legal experience and litigation practice; the legal team’s weekly meetings and strategy sessions; and the firm’s transparent billing policy.

Since its formation, the Law Offices of Scott David Stewart has earned the trust and respect of nearly 2,000 clients in cases ranging from relatively simple marital dissolutions to those involving complex property divisions, contested child custody issues, parental visitation matters, and child relocation disputes.

Scott David Stewart loves his home state of Arizona where he mentors children and counsels families dealing with tough legal issues. When he’s not working, mentoring, counseling, and writing books, the author spends his free time breaking a sweat at the local gym, golfing in the warm Arizona sunshine, volunteering at his church, and spending time with his family and friends.